



North Dakota Motor Fuels Newsletter

RICK CLAYBURGH, TAX COMMISSIONER
Office of State Tax Commissioner

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Dyed Special Fuel

Special fuel (diesel and heating) dyed red is subject to a 2% special fuel excise tax. ***This includes dyed fuel sold to state and local governments.***

Exceptions:

1. Fuel sold directly to an agency of the U.S. Government is exempt from state fuel taxes.
2. Fuel sold directly to a Native American residing on a reservation is exempt from state fuel taxes if the fuel is used on the reservation for heating or in nonlicensed equipment for an agricultural or industrial purpose.
3. Fuel sold directly to a Tribal agency is exempt from state fuel taxes.

Special Options:

1. Dyed fuel may be sold for use in a school bus owned or operated by state or local governments. A seller exercising this option must charge and remit the \$.21 per gallon special fuel tax. The purchaser must have proof that the dyed fuel was taxed at the \$.21 per gallon rate. ***This option does not apply to privately operated school buses.***
2. State and local governments may use dyed fuel taxed at the 2% excise tax rate in licensed motor vehicles used for road construction, reconstruction, or maintenance.

Enforcement:

Special fuels dyed red may not be used in a licensed motor vehicle (except as stated in Special Option 2 above). The North Dakota Highway Patrol is empowered to examine the fuel supply tank of a licensed motor vehicle, draw a fuel sample, and issue a citation. When a citation is issued, a copy is provided to the Tax Commissioner who issues a Notice of Determination and Assessment.

The Tax Commissioner's assessment consists of an administrative fee as follows:

- a. Two hundred fifty dollars for the first violation.
- b. Five hundred dollars for a second violation occurring within three years of a previous violation.
- c. One thousand dollars for a third violation occurring within three years of two previous violations.
- d. Five thousand dollars for a fourth and every subsequent violation occurring within three years of three or more previous violations.

The assessment also includes a tax computed at \$.21 per gallon times the capacity of the vehicle's fuel supply tank.

Kerosene:

Kerosene sold for use in a licensed motor vehicle is taxable at \$.21 per gallon. Kerosene, dyed or undyed, sold for any other use is subject to the 2% special fuel excise tax rate.

Undyed Special Fuel

Heating fuel and diesel fuels not dyed red are subject to a special fuel tax of \$.21 per gallon, regardless of use.

Exceptions:

1. Fuel sold directly to an agency of the U.S. Government is exempt from state fuel taxes.
2. Fuel sold directly to a Tribal agency is exempt from state fuel taxes.

State and local governments, including school districts, are not exempt from the \$.21 per gallon tax.

Buy Right:

Agricultural, industrial, and railroad consumers should purchase dyed fuel subject to the 2% special fuel excise tax for heating or for use in nonlicensed equipment, machinery, or locomotives.

If a consumer chooses to purchase undyed diesel fuels, the \$.21 per gallon special fuel tax applies and is nonrefundable, regardless of how the fuel is used.

Licensing

Pursuant to 1999 Legislative changes, persons engaged in the fuel business in North Dakota must be licensed based upon their business operation. New licenses displaying business categories are being issued. Notices are being sent to those who have not responded to our request for business category information.

Motor vehicle fuel retailers:

The amended licensing law does not provide for the licensing of persons whose gasoline/gasohol business is "retail" only. Those who are strictly retail and are currently licensed will be contacted in March 2000 regarding license cancellations.

Special fuel retailers:

The amended licensing law requires that all persons engaged in the “retail” sales of special fuels be licensed with the Tax Commissioner. The requirement is necessary because there are two tax rates involved in the sale of special fuels; \$.21 per gallon for undyed fuel, and 2% of the cost for dyed fuel.

Persons whose businesses are strictly retail will be contacted for licensing as they come to the attention of the Motor Fuel Tax Section. Those who purchase only undyed fuel and who continue to pay the \$.21 per gallon tax to their distributor or supplier may opt to have an “inactive” license. With an “inactive” license, the retailer is not required to post a security or file monthly tax reports.

Common carriers and contract carriers:

New legislation passed by the 1999 Legislature requires common and contract carriers to become licensed with the Tax Commissioner and to file diverted load reports. To assure proper implementation of this law, please write or call and provide the Motor Fuel Tax Section with the names and addresses of all common and contract carriers used by your business.

Aviation Fuel

Purchases and sales of aviation fuels are now reported on a separate tax report. Regular gasoline sold for use in an airplane is taxable at \$.08 per gallon as aviation fuel. To transfer the product from the motor vehicle fuel tax report to the aviation fuel tax report, do the following:

1. ***For the motor vehicle fuel tax report***, enter the gallons on the schedule of gallons disbursed, schedule type 6 “gallons sold in North Dakota tax free.” In column (5) enter “transfer to aviation fuel.” Include the gallons in the entries for lines 4 and 10 of the tax report.
2. ***For the aviation fuel tax report***, enter the gallons on the schedule of gallons received, schedule type 2 “gallons received in North Dakota tax free.” In column (5) enter “transfer from motor vehicle fuel.” Include the gallons in the entries for lines 2 and 14 of the tax report.

Schedules of Gallons Received and Gallons Disbursed

Applicable schedules of gallons received and gallons disbursed **must** accompany the monthly tax reports. Printed forms are provided by the Motor Fuel Tax Section. Computer generated schedules may be submitted in place of the forms **only** if the data on the printouts is in the same format as the forms provided by the Motor Fuel Tax Section. Separate forms are required for each applicable type of schedule.

Schedule of gallons disbursed – schedule type 5:

Businesses selling fuel “tax paid” for resale must submit schedule type 5 “Gallons Sold in North Dakota Tax Paid for Resale” for all fuel types. Previously schedule type 5 was required only for motor vehicle fuel. It is now required for special fuel, liquefied petroleum gas, and aviation fuel as well.

Alcohol/ethanol/gasoline blend:

Persons purchasing and selling alcohol/ethanol and gasoline for blending to form the generic product “gasohol” should detail their transactions as follows:

1. If invoiced as a blended product (i.e. alcohol/ethanol and gasoline mix), both the seller and the purchaser should report the transaction as gasohol product type 124.
2. If invoiced separately (i.e. there is a line item for alcohol/ethanol and a line item for gasoline), both the seller and the purchaser should itemize the transactions separately.

Sales to Native Americans

When taking credit for a tax free sale to a Native American, verification of the tax exempt sale must be included with the tax report. The verification can be copies of individual sales invoices or a listing of individual sales. **The purchaser’s Tribal ID number must be on the sales invoices or listings submitted.** The Tribal ID number is proof that the purchaser is entitled to tax free fuel. Without the tribal ID number, the tax free status becomes questionable.

Tax Credits on Sales to U.S. Government

Legislation passed in 1999 provides that when a person purchasing motor vehicle fuel (or special fuel, or aviation fuel) for resale purposes pays the applicable tax to the Tax Commissioner and later makes a sale of the fuel to an agency of the U.S. Government, the person may apply directly to the Tax Commissioner for a refund. Persons licensed with the Tax Commissioner may create a tax credit on their tax reports. Persons not licensed with the Tax Commissioner may contact the Motor Fuel Tax Section for forms.

Border Sales

All fuel sales transactions occurring on the North Dakota side of a bordering state or Canadian province are taxable in North Dakota. For example:

1. Fuel is sold to a heating fuel consumer whose property is split between North Dakota and Montana (or South Dakota, Minnesota, or Canada). The North Dakota tax applies when the sale occurs in North Dakota and when the fuel is delivered to a site in North Dakota.
2. Fuel is sold to an agricultural consumer whose farm or ranch is split between North Dakota and Montana (or South Dakota, Minnesota, or Canada). The North Dakota tax applies when the sale occurs in North Dakota and when the fuel is delivered to a site in North Dakota.
3. Fuel is sold tax paid to a retailer whose business is located at a site within the boundaries of North Dakota.
4. A “free” zone does not exist between the North Dakota and Canadian border for motor fuel tax purposes.

If You Need Assistance, Contact

Motor Fuel Tax Section
600 E. Boulevard Ave., Bismarck, ND 58505-0599
Phone: (701)328-3139 Fax: (701)328-3700